IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

WRIT PETITION NO. 8027 OF 2005.

Safrunisa R. Sahebzada & ors. ... Petitioner.

V/s.

Sadiquali M. Noorni ... Respondents.

Shri P.K. Dhakephalkar with Amol P.Mhatre for the petitioners.

Shri S.S. Lanke for the respondents.

CORAM : V.C.DAGA, J.

DATED : 8.12.2005

P.C. :

. This petition is at the instance of the legal heirs of Late Ramzan Ali Sahebzada, who was employee of M/s Tata Sons Ltd. and retired from the said company somewhere in the year 1996. Petitioners have obstructed execution of the consent decree for possession suffered by M/s Tata Sons Ltd., contending that the alleged tenancy rights of the deceased Ramzan Ali have devolved upon them and, now, they are the statutory tenants under the provisions of the Maharashtra Rent Control Act, 1999.

Factual Matrix:

2. Factual matrix reveals that M/s Tata Sons Ltd. were inducted as licensees in the suit

premises. M/s Tata Sons Ltd. under the agreement were permitted to permit its employees to occupy the suit premises. Accordingly, late Ramzan Ali Sahebzada, who was an employee of M/s Tata Sons Ltd. was permitted to occupy the suit premises for and on behalf of the Company.

3. Late Ramzan Ali retired from the employer-Company. Even after his retirement, he continued to occupy the suit premises and, ultimately, died on 5.2.2001, leaving behind the present petitioners as his legal heirs, who continued to occupy the said premises even after the death of Shri Ramzan Ali. Consequently, respondent issued notice to the company and terminated their tenancy and called upon them to quit, and hand over vacant possession of the suit flat. Since they did not vacate the suit premises in possession of the legal heirs of the deceased Ramzan Ali, the present petitioner filed a suit in the Court of Small Causes at Bombay, against M/s Tata Sons Ltd. seeking evictiion and vacant possession of the suit flat, inter alia; on the ground that the Company has lost protection of the Bombay Rent Act by virtue of section 3 of the Maharashtra Rent Control Act, 1999, since Authorised Share Capital of the said Company exceeds more than Rs. 1 Crore.

4. On being summoned, original defendant- M/s Tata Sons Ltd. appeared in the suit and, ultimately, compromised the said suit out of Court. Consent terms were filed. The Company thereunder agreed to submit to the eviction decree in terms of out of Court settlement. Respondent withdrew their claim with regard to mesne profits. The company furnished undertaking to the Court that the Company would hand over vacant possession of the suit flat and in the event same was not done, the respondent/Decree holder would be at liberty to execute the decree. The trial Court passed Decree in terms of the consent terms.

5. The company, who was supposed to hand over vacant possession of the suit flat to the respondent did not hand over the same with the result execution proceedings were initiated by the respondent and warrant of possession was obtained from the executing Court which came to be obstructed by the petitioners.

6. Respondents preferred Ejectment notice No. 42 of 2004 in the trial Court and prayed for orders against the petitioners, seeking their removal from the suit flat. In the notice, the respondents contended that the respondents have no right to the suit flat and that they are trespassers.

Petitioners filed their affidavit in reply inter alia; contending that the petitioners are legal heirs of the deceased Ramzan Ali, an employee of M/s Tata Sons Ltd. and are protected deemed tenants contemplated under section 7. The right was not claimed through the said Company (judgment debtor). Petitioners further contended that with determination of the tenancy rights of the Company the petitioners have became direct tenant of the respondent under the provisions of the Maharashtra Rent Control Act, 1999.

7. The petitioners further urged that the consent decree which was obtained by the respondents was in collusion with the Company by suppression of material facts. The trial Court was induced to pass a decree by playing fraud. It was, thus, prayed that the Obstructionist notice be dismissed with costs.

8. Petitioner adduced oral and documentary evidence in support of their case by filing affidavit under O. 18 R.4 of the Code of Civil Procedure. Respondents relied upon terms of the decree.

9. The trial Court by the impugned order dated 29.8.2005, allowed the Obstructionist notice and

directed removal of the petitioners with direction to them to hand over vacant possession of the suit flat within 3 months with further direction that if, any other person is found to be in possession of the flat, he should also be removed. The trial Court inter alia; held that deceased was a licensee of the company, and consequently, he was not protected under section 15-A of the Bombay Rent Act.

10. Being aggrieved by the aforesaid order and judgment of the trial Court dated 29.8.2005, petitioners preferred appeal before the Appellate Bench of the Small Causes Court. The lower appellate Court dismissed the appeal in limine and confirm the order of the trial Court.

11. Aggrieved by the aforesaid judgment of the lower appellate Court, the present petition has been filed under Article 227 of the Constitution of India.

Submissions:

12. Learned Counsel appearing for the petitioner reiterated his submissions which were made before the Courts below, which did not find favour with the Courts below.

13. The learned Counsel for the petitioner contended that decree was obtained by playing fraud on the trial Court and that the petitioners being legal heirs and representative of the deceased and were residing with the deceased as members of his family as such they would be entitled to protection by virtue of section 5(11)(c) of the Bombay Rent Act, 1947, read with section 7 of the Maharashtra Rent Control Act, 1999 since tenancy of the said flat devolved upon them. He, thus, contended that the impugned judgment and decree is liable to be set aside.

Consideration:

14. After hearing learned Counsel for the petitioners, it is not possible to accept either of the contentions advanced on behalf of the petitioners. Needless to mention that the deceased late Razim Ali was occupying the premises as agent of M/s Tata Sons Ltd., since he was in the employment of the Company. The licence in favour of M/s Tata Sons Ltd. was considered to be personal permission given to the licensee by the licensor. Permission to do or continue to do any immovable property, the grantor does not create any interest in the property. It is not transferable. Therefore, unlesss in advance any fresh licence in

favour of the said Late Ramzan Ali was executed by the licensor, the said late Ramzan Ali, by no stretch of imagination, could become a licensee of the licensor. Late Ramzan Ali as employee of M/s Tata Sons Ltd. was in occupation for and on behalf of M/s Tata Sons Ltd. Possession of the employee has to be treated as possession on behalf of his master, in this case on behalf of M/s Tata Sons Ltd. Likewise, therefore, M/s Tata Sons Ltd. was the only tenant as such late Ramzan Ali claiming through M/s Tata Sons Ltd. was bound by the decree suffered by M/s Tata Sons Ltd. as such, he or his legal heirs can not be allowed to claim protection of the Maharashtra Rent Control Act, 1999.

15. Since no independent individual right was created in favour of late Ramzan Ali, no such right could be claimed by legal heirs of the deceased Ramzan Ali and, therefore, none of the petitioners are occupying suit premises in their own rights.

16. It will not be out of place to mention that this Court inthe case of Surinder P.S. Pruthi & ors. vs. Commandors B.Y. Wad and ors. 1993 (3) Bom.C.R. 371, has held that to claim benefit of licensee under section 15-A occupant must be licensee in his own right. In the said case he was occupying on behalf of the Company and thereafter

when services ended he became a trespasser. It was, thus, held that at best company could be licensee tenant and no rights were left with occupant/plaintiff. The case being not of tenancy, Rent Act did not apply.

17. In view of what is stated hereinabove, the petition is devoid of any substance and the same is dismissed in limine with no order as to costs.

18. At this stage, learned Counsel for the petitioners prayed for 8 weeks time to approach higher Court. This prayer is opposed by the respondents. However, considering interest of justice, petitioners are granted 8 weeks time to approach higher Court. Accordingly, petitioners are granted 8 weeks time subject to filing undertaking to this Court that in the event they fail in the higher Court, they shall vacate the suit premises without any demur or obstruction. Undertaking to be filed within 2 weeks from today, failing which decree holder shall be entitled to execute the decree in accordance with law.

(V.C.DAGA,J.)